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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,841	03/25/2004	Mark Noonan	NOON-101(US)	6740

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EXAMINER	
BEACH, THOMAS A	
ART UNIT	**PAPER NUMBER**
3671	

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/808,841	NOONAN, MARK	
	Examiner	Art Unit	
	Thomas A. Beach	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *amendment filed 11/02/05*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15 17-29 31-35 37-60* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *19,20,37,46 and 47* is/are allowed.

6)☒ Claim(s) *1-15,17,18,21-29,31-35,38-45 and 48-60* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 17 objected to because of the following informalities: on line 13, the "member's footprint" lacks antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. Claims 1-4, 6-10, 13, 15, 17, 18, 21-24, 27, 29, 31, 32, 35, 38-42, 51-52, and 56-60 are rejected under 35 U.S.C. 102(b) as being anticipated by Townsend 6,163,986. Townsend shows an apparatus/method for removal and disposal of materials having a single wheel assembly 21 (equal to or greater than 30 inches; col. 3, lines 36-38; claims 1, 13, 27, 32, and 42) having an axle including a fulcrum member *capable* of transmitting a recoil reaction to an action; a driving member 22 with a U-shaped tubular body (fig. 2; claim 23) having an upper portion, a middle portion and a lower portion, wherein the middle portion is attached to the fulcrum member of the axle; a handle 38 disposed to the upper portion of the driving member and capable of moving the wheel assembly; and a blade 30 disposed to the lower portion of the driving member, the blade *adapted* to pick up a load of material from a surface when the blade is lowered to the surface by raising the handle and pushing forward; wherein the blade springs upwards and forwards, thereby releasing the load of material briskly away from the apparatus when the handle is pushed downwards to cause the wheel to compress and recoil through the fulcrum member at the axle of the wheel.

As concerns claims 2 and 18, Townsend shows the axle comprises a tubular body having first and second ends which support spokes connecting the axle to the rim, the tubular body forming the fulcrum member (fig 1).

As concerns claim 3, Townsend discloses the wheel assembly to be that of a bicycle which inherently would include a quick release for disconnecting the wheel assembly from the driving member;

As concerns claims 4, 38, and 39, Townsend shows the rim of the wheel assembly 21 is adapted to receive an elastic member capable of producinga recoil in response to an action applied, including a bicycle tire and body weight is applied at the waist level of the operator.

As concerns claims 6, 21, and 40-41, Townsend shows the blade 30 has two sidewalls and a back wall to keep the load of material from spilling out from the blade, where the load is propelled to the side of the shovel blade and the load is propelled in a straight-out departure path from the shovel blade.

As concerns claims 7 and 22, Townsend shows the blade 30 is shaped in the form of a scoop having a radius at the bottom,

As concerns claims 8-10 and 23-24, Townsend shows the driving member 22 comprises a tubular material made of metal or plastic (col. 3, lines 22-32).

As concerns claims 15, 29, and 35, Townsend shows the apparatus capable of loading sand and gravel or snow and slush (col. 1, lines 41-45).

As concern claims 51-52, Townsend shows (figs. 1-3) the height of the blade when lowered to the surface is less than the height of the axle, and wherein the height

of the blade during the recoil is less than or about equal to the height of the wheel and the apparatus is configured such that the middle portion of the driving member is generally horizontal when the blade is lowered to the surface to thereby allow selective adjustment to the longitudinal positioning of the fulcrum without substantially changing the handle height relative to the surface on which the apparatus is being supported.

As concerns claim 56, Townsend shows the shovel blade has a height when lowered to the surface that is less than the height of the axle and that is less than or about equal to the height of the wheel after having picked up the material (fig. 1).

As concerns claims 57 and 60, Townsend shows selectively repositioning the mounting location of the axle to the yoke 106 and reposition the wheel.

As concerns claim 58, Townsend shows the wheel 21 substantially centrally disposed relative to a width of the apparatus (fig. 1).

As concerns claim 59, Townsend shows the middle portion of the driving member includes two spaced-apart members, and wherein the wheel is substantially centrally disposed between the two spaced-apart members (figs. 2-3).

Claim Rejections - 35 USC § 103

3. Claims 5, 11, 25, 43, 48 (as applied to claim 42 below), 49-50 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Townsend 6,735,887 in view of Armstrong 5,810,408. Townsend does show the middle portion of the driving member is generally S-shaped but does not show the handle is slidably adjustable through a telescoping tubular material inside a hollow tubular driving member.

However, Armstrong shows a similar snow removal device having a middle portion of the driving member is generally S-shaped (fig. 7; claims 5 and 43) and the handle is slidably adjustable through a telescoping tubular material inside a hollow tubular driving member (16; claim 11, 25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Townsend, as taught by Armstrong, to include and adjustable s-shaped handle to ergonomically make the shovel more efficient, thus reducing the fatigue of the operator and improving the usefulness of the shovel.

As concern claims 49-50, the combination shows (Townsend, fig. 1) the height of the shovel blade prior to picking up the load of material is less than the height of the axle and the height of the shovel blade during propelling of a load of material is less than or about equal to the height of the wheel.

As concerns claim 55, the combination (Townsend, fig. 1) show the handle 38 to include a flat portion.

4. Claims 12, 14, 26, 28, 33-34, 44, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Townsend 6,163,986 alone. Townsend shows apparatus but does not show the specific dimension of the overall length of the apparatus is between about 78 to 88 inches, and can be increased to between about 89 to 100 inches (claim 12, 26, 33) or the height of the handle from a datum plane directly under the wheel is between about 48 to 60 inches, and can be increased to between about 42 to 66 inches (claim 14, 28, 34). However, Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the dimensions of the length,

wheel and handle of the apparatus since these changes in size would on require routine experimentiaon which is recognized as being within ordinary skill in the art, thus these dimensions are not patentably distinct and the apparatus would function equally well just outside these ranges.

As concern claim 44, the combination shows the axle comprises a tubular body having first and second ends which support spokes connecting the axle to the rim, the tubular body forming the fulcrum member (Townsend; fig 1).

As concern claim 45, the combination shows the handle ratio of 1:1 (Townsend; fig 1).

Allowable Subject Matter

5. Claims 19-20, 37 and 46-47 are allowed.

Response to Arguments

6. Applicant's arguments filed 11/02/05 have been fully considered but they are deemed moot in view of the new grounds of rejection.

Applicant's arguments regarding briskly releasing the material in response to recoil or the blade springing upwardly are not persuasive since structure of the reference meets that of the claim and the operation of the device of the reference is capable of a brisk movement downward that would cause the snow to be thrown. Furthermore, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

(i.e., "throwing or propelling snow) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Beach whose telephone number is 571.272.6988. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571.272.6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas A. Beach

January 28, 2006

THOMAS A. BEACH
Patent Examiner
Group 3600